

## Message Text

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ORIGIN PM-04

INFO OCT-01 EA-07 ISO-00 SSO-00 NSCE-00 INRE-00 NSC-05

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

INFO SECDEF WASHDC

JCS WASHDC

CINCPAC

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CINCPACFLT

CINCPACREPPHIL

CG 13TH AF

C O N F I D E N T I A L STATE 181984

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT:PHILIPPINE BASE NEGOTIATIONS: TAXATION

REF: A. MANILA 10276 USDEL 120, B. MANILA 10020 USDEL 104

1. APPRECIATE STRATEGY YOUR PROPOSAL REF A TO DRAW PHILS  
AWAY FROM INTRACTABLE TAX ISSUE BY AN OFFER TO MAXIMIZE USE  
OF PHIL CONTRACTORS. WE BELIEVE YOUR STRATEGY WARRANTS  
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FURTHER PURSUIT. HOWEVER, WE DO HAVE MISGIVINGS ABOUT RE-

OPENING TENTATIVELY AGREED TEXT OF ARTICLE XVIII (REF B) ABSENT CLEAR EXPRESSION OF PHIL WILLINGNESS TO RETREAT ON ISSUE OF TAX ON U.S. AND THIRD COUNTRY CONTRACTORS IN RETURN FOR SUCH A PROPOSAL, AND WE QUESTION NEED FOR SUCH PROPOSAL (SEE PARA 2 BELOW). WE ALSO HAVE MISGIVINGS ABOUT LANGUAGE OF USDEL'S PROPOSED NEW PARA 3 ARTICLE XVIII (PARA 5 REF A) AS SET FORTH PARA 4 BELOW.

2. IN OUR OPINION, PARA 1 ARTICLE XVIII ALREADY OBLIGATES US, WHEN FEASIBLE AND CONSISTENT WITH CRITERIA STATED THEREIN, TO MAXIMIZE PROCUREMENT OF, INTER ALIA, QUOTE SERVICES UNQUOTE, A REQUIREMENT THAT SEEMS SUFFICIENTLY BROAD TO RENDER UNNECESSARY ANY EXPRESS TREATMENT FOR PHIL CONTRACTORS IN A SEPARATE PARA. WE WOULD APPRECIATE YOUR PRESSING TO EXTENT POSSIBLE FOR PHIL ACCEPTANCE OF TAX :XEMPTION FOR NON-PHIL CONTRACTORS ON BASIS THIS OBLIGATION ON U.S. CONTAINED IN APPROVED LANGUAGE TO MAXIMIZE PROCUREMENT OF PHIL SERVICES.

3. NOTWITHSTANDING PHILS PROTESTATION OF ALLEGED DISCRIMINATORY TAX TREATMENT OF PHIL CONTRACTORS, IT MAY WELL BE, AS YOU HAVE DISCUSSED, THAT PHILS ARE CONCERNED LESS WITH ISSUE OF TAXATION THAN WITH PROVIDING INCREASED EMPLOYMENT OPPORTUNITIES FOR PHIL CONTRACTORS. IF PHILS ARE MOTIVATED MORE BY COMMERCIAL INTERESTS THAN BY PRINCIPLE INVOLVED, THEY WOULD BE MORE LIKELY TO ACCEPT CONCEPT OF QUOTE INVITED CONTRACTORS UNQUOTE SUITABLY ADAPTED FROM KOREAN SOFA. WE FEEL THAT SUCH A CONCEPT COULD BE EMBODIED IN A SEPARATE ARTICLE, AS IN THE KOREAN SOFA, OR PERHAPS IN CURRENT U.S. ARTICLE XVIII, SO LONG AS THE STANDARDS FOR SELECTION OF U.S. OR THIRD COUNTRY CONTRACTORS ARE CONSISTENT WITH EXISTING PRACTICES AND DO NOT COMMIT US UNREASONABLY TO USE OF PHIL CONTRACTORS.

4. IN THIS CONNECTION, WE ARE CONCERNED THAT LANGUAGE IN USDEL'S PROPOSED NEW PARA 3 OF ARTICLE XVIII (PARA 5 REF A) PARTICULARLY PROPOSED SUB-PARA 3 THEREOF, WOULD NOT RPT NOT BE CONSISTENT WITH EXISTING STANDARDS AND PRACTICES OF AWARDED OF CONTRACTS. WE ALSO NOTE APPARENT INCONSISTENCY USDEL'S PROPOSED PARA 3 ARTICLE XVIII WITH TENTATIVELY CONFIDENTIAL

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AGREED PARA 1 OF ARTICLE XVIII (PARA 4 REF B), AND THAT PROPOSED NEW PARA 3 OBVIOUSLY SETS MORE STRINGENT, SPECIFIC STANDARDS FOR AWARDED CONTRACTS TO NON-PHIL CONTRACTORS THAN TENTATIVELY AGREED PARA 1. ASIDE FROM DRAFTING DIFFICULTY THIS POSES, WE ARE EXTREMELY RELUCTANT TO PROPOSE A PROVISION FOR AWARDED CONTRACTS THAT WOULD SUPERSEDE CURRENT U.S. LAW AS STATED PARA 7 REF A, BOTH FOR SUBSTANTIVE POLICY REASONS AND DIFFICULTY WE FEEL THIS

COULD POSE IN OUR CONGRESSIONAL PRESENTATION. WE ALSO ARE NOT CLEAR AS TO SPECIFIC RESPECTS IN WHICH USDEL MAY CONSIDER IT NECESSARY TO SUPERSEDE CURRENT U.S. LAW IN TERMS OF ACTUAL PRACTICE ON THE GROUND BY WHICH WE HAVE BEEN AWARDING CONTRACTS. THEREFORE, WHILE WE HAVE NO DIFFICULTY WITH YOUR PURSUING STRATEGY OF OFFER TO MAXIMIZE USE OF PHIL CONTRACTORS, WE ARE NOT RPT NOT ABLE TO AUTHORIZE PROPOSED LANGUAGE PARA 5 REF A. WOULD APPRECIATE USDEL'S FURTHER COMMENTS ON THESE POINTS. ROBINSON

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